

# Court of Appeals, Division One

## Civil Appeal

**1 CA-CV 21-0295**

**SAN CARLOS v. STATE, et al.**

### Appellate Case Information

Case Filed: 26-May-2021

Case Closed:

### Dept/Composition

#### Department B

Hon. Paul J McMurdie

Hon. David B Gass

Hon. Angela K Paton

### Side 1. SAN CARLOS APACHE TRIBE, Appellant

(Litigant Group) SAN CARLOS APACHE TRIBE

- San Carlos Apache Tribe

#### Attorneys for: Appellant

Alexander Bennett Ritchie, Esq. (AZ Bar No. 19579)

Justine R Jimmie, Esq. (AZ Bar No. 19148)

### Side 2. STATE OF ARIZONA, et al., Appellee

(Litigant Group) ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

- Arizona Department of Environmental Quality

#### Attorneys for: Appellee

Jeffrey D Cantrell, Esq. (AZ Bar No. 17957)

(Litigant Group) ARIZONA WATER QUALITY APPEALS BOARD

- Arizona Water Quality Appeals Board

#### Attorneys for: Appellee

Dena Rosen Benjamin, Esq. (AZ Bar No. 15421)

James Howard Rolstead, Esq. (AZ Bar No. 25723)

### Side 3. RESOLUTION COPPER MINING, LLC, Intervenor/Appellee

(Litigant Group) RESOLUTION COPPER MINING, LLC

- Resolution Copper Mining LLC

#### Attorneys for: Intervenor/Appellee

Christopher D Thomas, Esq. (AZ Bar No. 10482)

Matthew Luis Rojas, Esq. (AZ Bar No. 25030)

Andrea Jeanne Driggs, Esq. (AZ Bar No. 23633)

Karl J Worsham, Esq. (AZ Bar No. 35713)

### CASE STATUS

Jan 26, 2023....Pending in ASC

### PREDECESSOR CASE(S)

MAR LC2019-000264-001

### Cause/Charge/Class

### Judgment/Sentence

### Judge, Role <Comments>

Sigmund G Popko,  
Authoring Judge of Order

### Trial

### Dispo

### DESCENDENT CASE(S)

ASC CV-22-0290-PR

### CASE DECISION

15-Nov-2022 OPINION

David Gass.....Author

Paul McMurdie.....Concur

Angela Paton.....Dissent

Filed: 15-Nov-2022

Mandate:

Decision Disposition

**Vacated**

### 47 PROCEEDING ENTRIES

- 26-May-2021 FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 04/26/21
- 26-May-2021 FILED: e-Record on Appeal:  
Instruments/Minute Entries  
Exhibits: None
- 26-May-2021 FILED: Appellate Clerk Notice re: Appellant's Fee/Case Management Statement/Brief Due
- 9-Jun-2021 FILED: Notice of Payment of Filing Fee; Certification (Certificate of Service) (Appellant)

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5.	15-Jun-2021	RECEIPT No.: 2021-00622 ; \$280.00, Authorization: #6503739903, Applied to: SAN CARLOS APACHE TRIBE - Class A Filing Fee (\$280.00) Paid for: San Carlos Apache Tribe Office of Attorney General - By nCourt LLC
6.	15-Jun-2021	FILED: Case Management Statement; Copy of MAR County ME filed 03/26/2021 re: Administrative Decision Affirmed (Appellant)
7.	29-Jun-2021	FILED: Appellate Clerk Notice re: Appellee's Fee; Appellant's Brief Due
8.	21-Jul-2021	FILED: Motion for a Procedural Order for an Extension of Time to File Opening Brief; Certification—Motion for a Procedural Order for an Extension of Time to File Opening Brief; Declaration of Alexander B. Ritchie in Support of a Motion for Procedural Order for an Extension of Time to File Opening Brief (Appellant)
9.	22-Jul-2021	ORDERED: Motion for a Procedural Order for an Extension of Time to File Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Monday, 07-26-2021 to Monday, 08-16-2021. If brief is not timely filed, the court will dismiss this appeal. Melina Brill ProTem Judge - Author
10.	16-Aug-2021	FILED: Appellant San Carlos Apache Tribes's [sic] Opening Brief; Certificate of Compliance; Certificate of Service (Appellant)
11.	16-Sep-2021	FILED: Unopposed Motion for Procedural Order to Extend Time to File Answering Brief; Certification (of Service) (Appellee ADEQ)
12.	17-Sep-2021	ORDERED: Unopposed Motion for Procedural Order to Extend Time to File Answering Briefs (Appellee ADEQ) = GRANTED. Due dates EXTENDED from Monday, 09-27-2021 to Monday, 10-18-2021. If the briefs are not timely filed, the court will submit this appeal for decision on the record and the filed briefs. Melina Brill ProTem Judge - Author
13.	11-Oct-2021	FILED: Notice of Substitution of Counsel Within Same Firm; Certificate of Service (Appellee Resolution Copper Mining)
14.	13-Oct-2021	FILED: Notice Regarding Arizona Water Quality Appeals Board's Nonparticipation in this Appeal Pursuant to A.R.S § 49-322(C); Certificate of Service (Appellee Arizona Water Quality Appeals Board)
15.	15-Oct-2021	RECEIPT No.: 2021-01129 ; \$140.00, Authorization: #87026779718, Applied to: RESOLUTION COPPER MINING, LLC - Class B Filing Fee (\$140.00) Paid for: Sharon Neilson - By nCourt LLC
16.	18-Oct-2021	FILED: Answering Brief; Certificate of Compliance; Certificate of Service (Appellee Arizona Department of Environmental Quality)
17.	18-Oct-2021	FILED: Answering Brief of Appellee Resolution Copper Mining, LCC [sic]; Certificate of Compliance; Certificate of Service (Appellee Resolution Copper Mining)
18.	29-Oct-2021	FILED: Motion for a Procedural Order for an Extension of Time to File Reply Brief; Certificate of Service (Appellant)
19.	1-Nov-2021	ORDERED: Motion for a Procedural Order for an Extension of Time to File Reply Briefs (Appellant) = GRANTED. Due dates EXTENDED from Monday, 11-08-2021 to Wednesday, 12-08-2021. If the briefs are not timely filed, the court will submit this appeal for decision on the record and the filed briefs. Melina Brill ProTem Judge - Author
20.	8-Dec-2021	FILED: Appellant's Reply Brief; Certificate of Compliance; Certificate of Service (Appellant)
21.	4-Jan-2022	FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
22.	14-Jan-2022	FILED: Supplemented Superior Court e-Record with Revised Index of Record
23.	26-Jan-2022	CLNDR: CONFERENCE, Department B, 3-22-22, COURTROOM 2.
24.	27-Jan-2022	ORDERED: Setting matter for oral argument for Tuesday, 03/22/2022 at 11:00 a.m. before Department B in Courtroom 2. Each side is allocated twenty minutes within which to present oral argument. Hon Paul J McMurdie - Author
25.	31-Jan-2022	FILED: Notice of Oral Argument
26.	31-Jan-2022	FILED: Return Receipt for Notice of Oral Argument, signed by Jeffrey D. Cantrell on 01/27/2022 (Appellee ADEQ)
27.	31-Jan-2022	FILED: Motion to Withdraw Counsel with Client Consent; Certificate of Service (Appellee ADEQ)
28.	7-Feb-2022	FILED: Return Receipt for Notice of Oral Argument, signed by Alexander B. Ritchie on 01/31/2022 (Appellant)
29.	7-Feb-2022	ORDERED: Motion to Withdraw Counsel with Client Consent (Appellee ADEQ) = GRANTED. Hon Paul J McMurdie - Author
30.	7-Feb-2022	FILED: Return Receipt for Notice of Oral Argument, signed by Christopher D Thomas on 01/31/2022 (Intervenor/Appellee)
31.	14-Mar-2022	ORDERED: Appellants and appellees shall file simultaneous supplemental briefs in court on or before Friday, 04/01/2022, addressing issues stated above. Supplemental briefs shall not exceed 7,500 words, and need not include table of contents, table of citations, etc., see ARCAP 3(a). Inclusion of an "argument" and "conclusion" is sufficient, see ARCAP 13(a). FURTHER ORDERED: Vacating oral argument in this matter for Tuesday, 03/22/2022 and resetting it to Tuesday, 04/26/2022 at 9:30 AM. Hon Paul J McMurdie - Author

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| 32. | 14-Mar-2022 | AMENDED ORDER: Appellants and appellees shall file simultaneous supplemental briefs in court on or before Friday, 04/01/2022, addressing issues stated above. Supplemental briefs shall not exceed 7,500 words, and need not include table of contents, table of citations, etc., see ARCAP 3(a). Inclusion of an "argument" and "conclusion" is sufficient, see ARCAP 13(a). FURTHER ORDERED: Vacating oral argument in this matter for Tuesday, 03/22/2022 and resetting it to Tuesday, 04/26/2022 at 9:30 AM. Hon Paul J McMurdie - Author |
| 33. | 21-Mar-2022 | FILED: Notice of Appearance; Certificate of Service (Appellee Resolution Copper Mining, LLC)  |
| 34. | 22-Mar-2022 | FILED: Return Receipt for Notice of Oral Argument, signed by Jeffrey D Cantrell on 03/14/2022 (Appellee Arizona Department of Environmental Quality)  |
| 35. | 22-Mar-2022 | FILED: Return Receipt for Notice of Oral Argument, signed by Alexander B Ritchie on 03/14/2022 (Appellant)  |
| 36. | 23-Mar-2022 | FILED: Return Receipt for Notice of Oral Argument, signed by Christopher D Thomas on 03/14/2022 (Appellee Resolution Copper Mining LLC)   |
| 37. | 1-Apr-2022  | FILED: Supplemental Brief; Certificate of Compliance; Certificate of Service (Appellee Arizona Department of Environmental Quality)   |
| 38. | 1-Apr-2022  | FILED: Appellant's Supplemental Brief; Certificate of Compliance; Certificate of Service (Appellant)  |
| 39. | 1-Apr-2022  | FILED: Supplemental Brief of Appellee Resolution Copper Mining, LLC Regarding A.R.S. § 12-910; Certificate of Compliance; Certificate of Service (Appellee Resolution Copper Mining, LLC)   |
| 40. | 27-Apr-2022 | ORDERED: Vacating conference in above referenced case currently scheduled for 04/26/2022. FURTHER ORDERED: Resetting conference in this matter to Tuesday, 05/03/2022. Hon Paul J McMurdie - Author   |
| 41. | 27-Apr-2022 | ORDERED: Amending 04/27/2022 order by deleting date 05/03/2022 and replacing it with 05/17/2022. Hon Paul J McMurdie - Author   |
| 42. | 27-Apr-2022 | FILED: Sign-in Sheet/Case is Under Advisement as of 04/26/2022  |
| 43. | 15-Nov-2022 | OPINION (Vacated) Hon David B Gass - Author; Hon Paul J McMurdie - Concur; Hon Angela K Paton - Dissent   |
| 44. | 15-Nov-2022 | FILED: Opinion Distribution List  |
| 45. | 15-Dec-2022 | FILED: ASC Order filed 12/15/2022 re: extending time for filing Petition for Review to 01/17/2023   |
| 46. | 26-Jan-2023 | FILED: Email Notice from ASC re: Petition for Review filed 1/24/23; request for partial record  |
| 47. | 26-Jan-2023 | FILED: Letter forwarding partial record to Arizona Supreme Court  |